IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

WP(C).No. 2207 of 2007(K)

AGAINST THE ORDER IN IA.2287/2006 IN OS.34/2004 OF ADDL.SUB COURT, PALAKKAD.

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PETITIONERS/ PLAINTIFF:

1. **P.BHASKARAN, S/O.RAMAN, AGED 70 YEARS, LAKSHMI NIVAS, PADINJARE YAKKARA, YAKKARA AMSOM, KANNADI II VILLAGE, PALAKKAD TALUK.**
2. **P.SANIL, S/O.P.BHASKARAN, AGED 32 YEARS, LAKSHMI NIVAS, PADINJARE YAKKARA, YAKKARA AMSOM, KANNADIL II VILLAGE, PALAKKAD TALUK.**

BY ADV. SRI.K.ANAND.

RESPONDENTS/ DEFENDANTS:

1. **HEMALATHA, W/O LATE SAHADEVAN, AGED 50 YEARS, ARIKKODUKALAM, THENKURISSI, ERIMAYUR VILLAGE, ALATHUR TALUK.**
2. **C.S.KRISHNANUNNI, S/O LATE SAHADEVAN, ARIKKODUKALAM, THENKURISSI, ERIMAYUR VILLAGE, ALATHUR TALUK.**
3. **C.S.HAREESH, S/O LATE SAHADEVAN, ARIKKODUKALAM, THENKURISSI, ERIMAYUR VILLAGE, ALATHUR TALUK.**

BY ADV. SRI.M.V.JOHN,
SRI.B.JAYAPARAKASH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.2207/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE I.A. NO. 2287/06 DTD. 12/09/2006.

EXT.P.2: COPY OF THE I.A. NO. 3002/06 DTD. 13/09/2006.

EXT.P.3: COPY OF THE COMMON ORDER IN I.A. NOS.2287/06 AND 3002/06 IN O.S. NO. 34/04 DTD. 25/09/2006.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

M.N.KRISHNAN, J

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W.P.(C) No.2207 OF 2007

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Dated this the 1st day of December 2007

JUDGMENT

This writ petition is filed against the common order passed by the Addl.Sub Court, Palakkad in I.A.Nos.2287 & 3002 of 2006 in O.S.No.34 of 2004. The prayers in the interim applications are: to receive the cheque alleged to be handed over by deceased C.M.Sahadevan for Rs.5,50,000/- in favour of the plaintiff and also for a consequential amendment.

2. The suit is one for realisation of the amount alleged to be due from deceased Sahadevan. Neither in the lawyer notice nor in the plaint nor in the evidence of PW1 there is any statement regarding alleged execution of the cheque. After the evidence of PW1 was closed, an application is filed to receive the cheque as well as to amend the plaint. Learned counsel for the petitioners has drawn my attention to the decision of the Apex Court reported in ***Baldev Singh v. Manohar Singh(2006 (3) KLT 953)*** whereby the court held that courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. It is also fundamental under Order VI Rule 17

that when an application for amendment is filed there must be bona fides. It has to be remembered that the suit is one for realisation of the amount due from Sahadevan. As stated by me earlier, neither during the notice stage or at the stage of pleading nor the last stage of evidence there is any whisper about the execution of the cheque. When a suit is filed for realisation of the amount and if it is supported by a valid document that the first thing to find place in the plaint. It is absolutely silent. Therefore now if this document is received and an amendment is permitted to be allowed, certainly it will cause serious injustice and irreparable loss to the defendants. Further, after the amendment of the C.P.C. under Order VI Rule 17 an amendment application can be entertained as of right only upto the stage of trial and unless there are exceptional warranting circumstances amendment cannot be allowed. There are no such exceptional circumstances nor any explanation tendered in that regard. Therefore, I find that the application for amendment lacks bona fides and it causes serious injustice and prejudice to the defendants and further there are no grounds to receive after the evidence of PW1 is closed.

Therefore, the approach made by the court below is in order and it

does not suffer from any illegality or infirmity and therefore the writ petition is dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-